

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CODY WAYNE BERGUM,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

CODY WAYNE BERGUM,

Respondent-Appellant.

UNPUBLISHED
January 30, 2014

No. 312369
Wayne Circuit Court
Family Division
LC No. 10-495078-DL

Before: WILDER, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Respondent, a minor, appeals as of right an escalation order placing him in a secure placement facility. Respondent made a plea of admission to a charge of assault and battery, MCL 750.81, with an earlier charge of assault and battery dismissed, in exchange for his agreement to participate in the Supervised Treatment for Alcohol and Narcotic Dependency (STAND) program. We affirm.

Respondent asserts that he did not have an attorney for the 10 months he was in the STAND program. He further asserts that, during his time in the program, he was detained in the Juvenile Detention Facility at least six times and placed in a drug treatment program for more than two weeks. Respondent argues that not having legal representation during his time in the STAND program violated his constitutional right to counsel.

Respondent failed to raise any of these alleged errors in the trial court. Unpreserved claims are reviewed for plain error affecting a defendant's substantial rights. *People v Carines*, 460 Mich 750, 766-768; 597 NW2d 130 (1999). "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error 'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence.'" *Id.* at 763-764, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993).

MCR 3.915(A) requires only that a juvenile not represented by counsel be advised of his right to counsel at each stage of the proceedings on the formal calendar. At the time of respondent's plea of admission, he was represented by counsel. His counsel informed the court that respondent had been accepted into the STAND program. To be accepted into the STAND program, MCL 600.1068(1)(c) requires a juvenile to waive in writing his right to speedy trial, the right to representation at drug treatment court review hearings by an attorney, and with the agreement of the prosecutor, the right to a preliminary examination. Respondent complied with this requirement and agreed, in writing, to waive these rights. Without the execution of this required waiver, respondent would not have been admitted into the STAND program. The hearings referenced by respondent were drug treatment court review hearings and, in accordance with his waiver, respondent was not represented by counsel. Since respondent voluntarily waived his right to counsel in accordance with MCL 600.1068(1)(c), there was no violation of his constitutional rights, and respondent's argument must fail. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) ("One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights . . .").

Respondent next asserts that at the hearings held on October 3, 2011, and August 15, 2012, respondent's attorney, not the court, informed him of his rights and established the factual bases for his pleas of admission. Respondent argues that by allowing respondent's attorney to assume its role in violation of the Michigan Court Rules, the trial court committed error. We disagree. Respondent did not raise this issue at the lower court so it also is reviewed for plain error affecting his substantial rights. *Carines*, 460 Mich at 763.

MCR 3.941 governs the taking of a juvenile's plea of admission. Specifically, MCR 3.941(C) states that "[b]efore accepting a plea of admission or of no contest, the court must personally address the juvenile and must comply with subrules (1)-(4)." When respondent made his plea of admission on November 30, 2010, he had counsel. Respondent was also personally addressed by the trial court in compliance with subrules (1) to (4). The trial court informed him of the offense charged, the possible dispositions, and confirmed that his plea was voluntary and accurate, and that there was support for the plea.

On October 3, 2011, the court conducted a dispositional hearing for violations of the rules and regulations of the STAND program. Respondent's attorney conducted the voir dire regarding the charges and respondent's rights. On August 15, 2012, the court conducted a hearing on an escalation petition. Again respondent's attorney volunteered to voir dire respondent regarding his trial rights and to establish the factual basis of the plea. His attorney also stated that respondent was prepared to make admissions regarding parts of the escalation petition.

These hearings addressed respondent's probation violations. MCR 3.944 governs juvenile probation violations and does not contain a requirement that the trial court personally address the juvenile during probation violation hearings. The pleas taken in the October 2011 and August 2012 hearings complied with the requirements of MCR 3.944(C). Moreover, even if there were any error, respondent has failed to show how he was prejudiced by having his attorney voir dire him instead of the trial court. Therefore, respondent has failed to establish any plain error that affected his substantial rights, and his claim fails.

Lastly, respondent asserts that his sentence to a secure placement facility constituted cruel and unusual punishment in violation of the Eighth Amendment because the sentence was in excess of what an adult could have received for the same assault and battery charge and because the sentence was disproportionate to the offense. We disagree. We review this unpreserved issue for plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763.

MCL 712A.18 gives the juvenile court authority to enter any of the listed orders that are appropriate for the juvenile's and society's welfare in view of the facts proven and ascertained. Respondent was ordered into a secure treatment facility in accordance with this statute. This placement was appropriate for the welfare of both respondent and society. Respondent had voluntarily entered the STAND program so that he could address his drug problem and have his assault and battery charge dismissed. However, respondent continued to use drugs while in the program. As indicated by the court, despite many chances, respondent continued to test positive for drugs. Accordingly, respondent was ordered into a secure treatment facility not for punishment, but so he could conquer his drug problem.

Respondent further argues that the sentence was disproportionate to the underlying assault and battery charge. Respondent's argument must fail for several reasons. First, the courts have recognized a difference in sentencing juveniles and adults, holding that it was cruel and unusual to treat a juvenile offender the same as an adult offender. See, e.g., *Miller v Alabama*, 567 US ____; 132 S Ct 2455, 2464; 183 L Ed 2d 407 (2012) (recognizing that juveniles are constitutionally different than adults for the purposes of sentencing). Here, respondent *voluntarily* enrolled in the STAND program to receive treatment for his drug problem and have his juvenile matter dismissed. This option would not have been available for an adult offender and was meant more as help for respondent rather than punishment.

Secondly, at the time of his plea of admission, the court informed respondent that "the most drastic thing the Court can do . . . [is] order you detained placed away from your home and the Court could order you placed until your 19th birthday." Respondent acknowledged that this consequence was possible should he make a plea of admission, yet he still entered his plea. Respondent accepted this consequence, and his own behavior in continuing to violate the rules and regulations regarding drug usage triggered the imposition of this consequence.

Lastly, the placement to a secure treatment facility was based upon respondent's drug violations, not his assault and battery charge. There is no evidence that this additional time spent in drug treatment is disproportionate to respondent's continued drug use. In fact, respondent's repeated failed drug screens demonstrated that *more* time for treatment would have been appropriate. Based upon all of the foregoing, the additional time spent under the jurisdiction of the juvenile court was necessitated by respondent's own violations and needs and thus do not constitute cruel and unusual punishment under the Eighth Amendment.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto